

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS WELFARE  
FUND, NEW YORK CITY DISTRICT COUNCIL OF  
CARPENTERS VACATION FUND, NEW YORK CITY  
DISTRICT COUNCIL OF CARPENTERS ANNUITY FUND,  
NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS  
APPRENTICESHIP, JOURNEYMAN RETRAINING,  
EDUCATIONAL AND INDUSTRY FUND, NEW YORK  
CITY DISTRICT COUNCIL OF CARPENTERS CHARITY  
FUND, and THE NEW YORK CITY AND VICINITY  
CARPENTERS LABOR MANAGEMENT COOPERATION  
FUND, by MICHAEL J. FORDE, and PAUL O'BRIEN,  
as TRUSTEES,

Plaintiffs,

-against-

C & M INTERIORS INC.,

Defendant.

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Plaintiffs, (hereinafter also referred to as "Benefit Funds"), by their attorneys O'Dwyer & Bernstien, LLP, for their Complaint allege as follows:

#### **NATURE OF THE CASE**

1. This is an action to confirm and enforce an Arbitrator's Award rendered pursuant to a collective bargaining agreement ("Agreement") between The District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America ("Union") and C & M Interiors Inc. ("Employer").

#### **JURISDICTION**

2. This Court has subject matter jurisdiction over this proceeding pursuant to section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, sections

502(a)(3)(B)(ii), (d)(1), (e) and (g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1132(a)(3)(B)(ii), (d)(1), (e) and (g), section 515 of ERISA, 29 U.S.C. §1145, and section 9 of the Federal Arbitration Act, 9 U.S.C. §9.

3. Personal jurisdiction is based upon Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

#### **VENUE**

4. Venue is proper in this district in that Plaintiffs' offices are located in this district.

#### **PARTIES**

5. At all times relevant herein the Plaintiffs were jointly administered, multi-employer, Taft-Hartley Benefit Funds administered by trustees designated by a union and by employers, established and maintained pursuant to section 302(c)(5) of the LMRA, 29 U.S.C. §186(c)(5). Plaintiffs Forde and O'Brien are fiduciaries of the Benefit Funds within the meaning of ERISA sections 3(21) and 502, 29 U.S.C. §§1002(21) and 1132.

6. The Benefit Funds are employee benefit plans within the meaning of sections 3(1) and (3) of ERISA, 29 U.S.C. §1002(1) and (3) and are maintained for the purposes of providing health, medical and related welfare benefits, pension and other benefits to eligible participants and beneficiaries on whose behalf they receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the Union.

7. Upon information and belief defendant C & M Interiors Inc. is a domestic corporation incorporated under laws of the State of New York with a principal place of business located at 157 Walsh Road, Yonkers, NY 10701.

8. The defendant is an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. §1002 (5).

**FIRST CLAIM FOR RELIEF**

9. Defendant, C & M Interiors Inc., was bound at all relevant times by a collective bargaining agreement with the Union. Said Agreement provides, inter alia, that the defendant shall make monetary contributions to the Benefit Funds on the behalf of covered employees, and for the submission of disputes to final, binding arbitration.

10. A dispute arose during the period of the Agreement between the parties when the Employer failed to comply with obligations under the Agreement to make contributions for employees in the bargaining unit.

11. Pursuant to the arbitration clause in the Agreement, the dispute was submitted to arbitration to Robert Herzog, the duly designated impartial arbitrator.

12. Thereafter, upon due notice to all parties, the arbitrator duly held a hearing February 13, 2007. At said hearing the parties reached a settlement which was rendered as a consent award dated February 27, 2007 determining said dispute. Upon information and belief, a copy of the award was delivered to the defendant (A copy of the award is annexed hereto as Exhibit "A" and made part hereof).

13. The consent award dictated that C & M Interiors Inc. acknowledged that it had failed to make contributions due to the Benefit Funds for the period April 18, 2006 through June 20, 2006, in the principal amount of \$89,070.40.

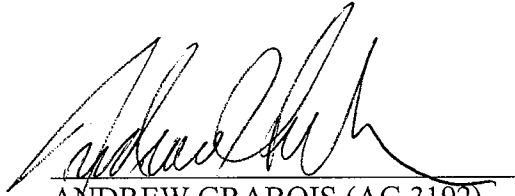
14. The consent award also dictated that C & M Interiors Inc. acknowledged that it was required to pay interest on the principal amount due at the rate of 10% per annum from the date of the award.

15. The defendant, C & M Interiors Inc. has failed to abide by the consent award.

WHEREFORE, Plaintiffs demand judgment against defendant as follows:

1. For an order confirming the arbitration award in all respects;
2. For entry of judgment in favor of the Plaintiffs and against C & M Interiors, Inc.  
in the principal amount of \$89,070.40, plus 10% interest per year from the date of the award to  
the date of entry of judgment;
3. For attorneys' fees and costs of this action;
4. For such other and further relief as this court may deem just and proper.

Dated: New York, New York  
June 6, 2007



ANDREW GRABOIS (AG 3192)  
O'Dwyer & Bernstein, LLP  
Attorneys for Plaintiffs  
52 Duane Street  
New York, NY 10007  
(212) 571-7100

# **EXHIBIT A**

OFFICE OF THE IMPARTIAL ARBITRATOR

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In The Matter Of The Arbitration

between

New York City District Council of Carpenters  
Pension Fund, New York City District Council of  
Carpenters Welfare Fund, New York City  
District Council of Carpenters Vacation Fund,  
New York City District Council of Carpenters  
Annuity Fund, New York City District Council  
of Carpenters Apprenticeship, Journeyman  
Retraining, Educational and Industry Fund,  
New York City District Council of Carpenters  
Charity Fund, United Brotherhood of Carpenters  
and Joiners of America Fund and New York City  
and Vicinity Joint Labor Management Cooperation  
Trust Fund, by Michael J. Forde and Paul  
O'Brien, as Trustees

CONSENT

AWARD

(Funds)

-and-

C & M INTERIORS INC.

(Employer)

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BEFORE: Robert Herzog, Esq.

C & M Interiors Inc. (hereinafter referred to as the  
"Employer") and the District Council of New York City and Vicinity  
of the United Brotherhood of Carpenters and Joiners of America, are  
parties to a Collective Bargaining Agreement providing for  
arbitration of disputes before the undersigned Arbitrator as  
Impartial Arbitrator, and in which the Employer has therein agreed,  
for the duration of the agreement, to pay contributions toward  
employee benefit funds (hereinafter collectively referred to as the  
"Funds"). The Funds, as beneficiary of the Collective Bargaining  
Agreement, have standing before the Arbitrator. In accordance

therewith, the Funds, by a December 26, 2006 Notice of Intention to Arbitrate, demanded arbitration. The Funds alleged the Employer failed to make benefit contributions to the Funds for the period April 18, 2006 to June 20, 2006 as required by the Collective Bargaining Agreement. A Notice of Hearing, dated January 19, 2007, advised the Employer and the Funds that an arbitration hearing was scheduled for February 13, 2007.

On February 13, 2007, at the place and time designated by the January 19, 2007 Notice of Hearing, Steven Kasarda, Esq. appeared on behalf of the Funds; Carmine Castiello, President of C & M Interiors Inc., appeared on behalf of the Employer. During the February 13, 2007 arbitration hearing, the parties advised the Arbitrator that they had succeeded in effecting an amicable resolution of the above dispute. Each element of the Consent Award was read into the record during the arbitration proceeding. Carmine Castiello, on behalf of the Employer, and Steven Kasarda, Esq., on behalf of the Funds, each was asked if he, on behalf of their respective parties, understood and agreed to each said provision. Both Carmine Castiello and Steven Kasarda, Esq. individually acknowledged his full consent to each of the following elements of the Consent Award by reciting his affirmative attestation into the record:

### **CONSENT AWARD**

1. During the April 18, 2006 through June 20, 2006 period, C & M

Interiors Inc. was bound to a Collective Bargaining Agreement with

the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America.

2. During the April 18, 2006 through June 20, 2006 period, C & M Interiors Inc. failed to make Collective Bargaining Agreement mandated contributions to the Funds in the sum of sixty-six thousand six hundred eighty-eight dollars and forty-two cents (\$66,688.42).

3. C & M Interiors Inc. agrees to pay to the Funds the principal deficiency amount plus other contractual and trust document authorized amounts as follows:

Principal Due	\$ 66,688.42
Interest Due	5,131.45
Late Payment Interest	872.85
Liquidated Damages	13,337.68
Promotional Fund	190.00
Court Costs	350.00
Audit Costs	500.00
Attorney's Fee	1,500.00
Arbitrator's Fee	500.00
TOTAL	\$ 89,070.40

4. C & M Interiors Inc. agrees to pay the District Council Carpenters Benefit Funds the aggregate amount of eighty-nine thousand seventy dollars and forty cents (\$89,070.40) with interest to accrue at the rate of 10% from the date of this Award.

Dated: February 28, 2007

  
Robert Herzog  
Arbitrator



State of New York )

County of Rockland )

I, Robert Herzog, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

  
Robert Herzog  
Arbitrator

Dated: February 27, 2007

To: C & M Interiors Inc.  
Attn: Carmine Castiello, President  
157 Walsh Road  
Yonkers, New York 10701

Steven Kasarda, Esq.  
New York City District Council Carpenters Benefit Funds  
395 Hudson Street  
New York, New York 10014